

## **AMENDMENTS TO THE DRAWINGS**

A new formal drawing sheet, containing Fig. 6, is attached at the end of this Amendment.

## **REMARKS/ARGUMENTS**

Claims 1-20 are pending in the application. Claim 1 has been amended so as to incorporate therein the subject matter of claims 3 and 9. Thus, claims 3 and 9 are canceled without prejudice or disclaimer of applicants' right to pursue patent protection for the subject matter contained therein in a subsequent application. Claim 1 is, moreover, further amended to recite the formation of a perimetric space around the wick, between the wick and the pipe. Support for this amendment may be found at page 2, lines 23-24, page 6, lines 4-6 and drawing Figure 3. Claim 15 is amended by incorporating therein the recitation of original claims 16-18. Claims 16-18 have, therefore, been correspondingly canceled without prejudice or disclaimer. No new matter is added due to the above-indicated amendments. Upon entry of this Amendment, therefore, claims 1, 2, 4-8, 10-15 and 19-20 will be pending in the application.

## **DRAWINGS**

The Examiner's acceptance of the proposed new drawing submitted with applicants' previous response mailed July 26, 2005 (see p. 2 of the Office Action) is noted with appreciation. The Office Action goes on to state that the proposed drawing submitted by applicants is not considered as a formal drawing, and thus a formal drawing of Figure 6 must now be provided.

A new formal drawing sheet, containing Figure 6 as approved by the Examiner, is therefore attached at the end of this Amendment for entry into the file of the application.

## **ALLOWABLE SUBJECT MATTER**

The Office Action states, at p. 4, that claims 9 and 12 contain allowable subject matter. Further according to the Office Action, claim 9 (which depends from claims 3/1) would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, 2<sup>nd</sup> Paragraph, and to include all of the limitations of the base claim and any intervening claims.

In response, applicants have now amended claim 1 to include therein the recitation of both claim 9 and claim 3 from which, as indicated above, claim 9 depends. Furthermore, the subject matter of claim 9 has been incorporated in a manner which is deemed to overcome the rejection of

that claim under §112, 2<sup>nd</sup> Paragraph (i.e., the word “may” has been deleted). Claims 3 and 9, accordingly, have been canceled from the application without prejudice or disclaimer. As amended, therefore, claim 1 is believed to be in condition for allowance. Moreover, claims 2, 4-8, 10-14 and 19-20, which depend directly or indirectly from claim 1, are also believed to be allowable for the same reasons as claim 1.

For the reasons above, therefore, the Examiner is respectfully requested to reconsider and withdraw the §112 rejection of claim 9 as well as the §102 rejection of claims 1-4, 6, 8, 10, 11 and 13-14 based on Millan USP 6,285,830 and the §103 rejection of claims 5, 7, 19 and 20 over Millan (USP 6,285,830) in view of Vieira (USP 6,563,091) or Yamamoto et al (USP 4,874,924)

#### **§102 REJECTION OF METHOD CLAIMS OVER MILLAN AND VIDAL**

Method claims 15-18 are rejected under §102(b) as allegedly anticipated over USP 6,285,830 to Millan. Additionally, claims 15-17 are rejected for anticipation over USP 1,994,932 of Vidal. As indicated above, claim 15 has been amended to recite the subject matter of claims 16-18 and thus the subject claim now more distinctly recites the method of applicants' invention. Claims 16-18 therefore, have been canceled from the application without prejudice or disclaimer. Thus, the anticipation rejections of those claims are viewed as moot by applicants. The remarks which follow are thus directed to independent method claim 15, as amended, which is the only method claim remaining in the application.

Turning first to the patent to Millan, applicants note that claim 15 has been additionally amended to recite that the pipe is rotatable on its axis, i.e., around its longitudinal axis, but it can not be displaced vertically. Support for this amendment is found, e.g., on p 5 at lines 4-5 of applicants' specification and thus no new matter is added to the claim thereby. As noted by the Examiner (see, “Response to Arguments” on p. 5 of the Office Action), the tube portion of the device described in Millan is rotatable, to an extent, around its longitudinal axis, while also being capable of up and down motion as the guide (13) rotates along the peripheral inclined track (10). Thus, the tube in Millan is capable of both rotational and up and down motion. Moreover, in Millan the regulation of the air is performed exclusively due to the vertical displacement of the tube. That is, the fact that the tube additionally rotates around its axis is not relied upon for

control of the air flow in the subject device. In contrast, as now recited in (amended) claim 15, the pipe (tube) used in the present invention can not be displaced vertically. Thus, in Millan, the air flow is controlled by adjusting the 'length' (i.e., height) of the chimney, whereas in the present invention, the chimney height is a constant. There is, moreover, no teaching in the present application, or even a suggestion, that the pipe used to control the effect of the heat on the wick, should be able to be displaced vertically. For the reasons above, therefore, the Examiner is respectfully requested to reconsider and withdraw the anticipation rejection of claim 15 over the Millan '830 patent.

Turning next to Vidal, in response to the remarks by applicants concerning the subject reference in their Response dated July 26, 2005, the Examiner points to the element designated as "14", referred to by the patentee as "lateral parts 14" and he characterizes these 'parts' as 'openings' which, according to the Examiner's position, allow heated air to pass through the pipe (3) via the heating element (8). The operation of the Vidal device is described in the left-hand column on p. 2 of the subject patent, at from lines 7-18. As indicated therein, an electrical current is passed through the wire surrounding the inner metal tube which contains the wick. The resistance occasioned due to the passage of this current provides heat. The heat is then transmitted to the absorbing wick. The Examiner suggests, as noted above, that this heat transference occurs through 'lateral parts 14' (see, e.g., the right-hand column on p. 1 of the reference, at lines 50-53). Notwithstanding the above, however, applicants submit that the reference contains no teaching, or even a suggestion, to regulate the amount of hot air entering the chamber (formed by the tube 3) by displacing the tube (pipe) relative to the heat source by modifying the distance between the tube opening and the heat source. That is, there is no teaching that the tube is rotatable to adjust the spacing between lateral parts 14 and the heat source. For the reasons above, therefore, the Examiner is respectfully requested to reconsider and withdraw the §102 rejection of claim 15 based on the Vidal reference.

#### **EUROPEAN PATENT APPLICATION NO. EP 1 283 062 A1**

In a Written Opinion issued by the International Preliminary Examining Authority with regard to applicants' counterpart PCT application for this invention (PCT/ES2004/00039), the

Authorized Officer cited a new reference which has not been cited in the present application, i.e., European Patent Application No. 1 283 062 A1 (identified in the Written Opinion as Ref. "D5"). Under separate cover, applicants are filing, together with this Amendment, an Information Disclosure Statement with a copy of the reference and the Written Opinion applying the subject reference, together with a Form PTO-1449 listing the same. It is respectfully requested that the subject European application be made of record in this application.

Applicants contend, moreover, that the claims of this application, in their present form, are also completely distinguishable over the EP-062 reference. With regard to the subject European publication, applicants note that amended claim 1 recites that part of the wick is contained within a pipe, such that a perimetric space around the wick defines a chamber having a reduced space surrounding the wick. This arrangement enhances the chimney effect, such that it substantially reduces (compared to the prior art) the amount of heat energy otherwise required to obtain the degree of evaporation required (see, specification p. 2, lines 28-33).

In contrast, the evaporation device described in EP-062 comprises a tube 4 which has a partially removed wall (Fig. 8) and wherein the wick is placed within the tube (see paragraph 0015). According to col. 4, lines 40-43 of the subject reference, by rotating the tube 4 the chimney effect produced by the resistor R is varied. As can be seen, for example, in Figs. 8 and 9 of the subject EP reference, however, tube 4 is not a pipe in the sense that term is used in the present application. This is due to the fact that tube 4 does not contain part of the wick. That is, tube 4 is, in fact, a curved wall which acts as a shield between the wick and the resistor R so that, depending upon the position of tube 4, more or less hot air reaches the wick. Although on lines 40-41 of paragraph 0015 the authors of the subject reference state that a 'chimney effect' is achieved, this is not entirely true, since a large portion of the tube 4 is removed such that there is no 'chimney' to serve as a guide. If there is actually any such chimney effect, this effect is limited only to the space between the resistor and the wick.

Still further, in EP-062 there is no perimetric space defined around the wick between the wick and the pipe. This is due to the fact that, as indicated above, a large portion of tube 4 is removed and, consequently, a chamber of reduced volume for housing the wick is not produced in accordance with the arrangement disclosed by the subject document. That is, a tube having a

large portion removed can not be considered any longer to be a tube; rather, it becomes in fact simply a curved wall. Furthermore, in EP-062 there is no perimetric space around the wick located above the resistor, in which space the chimney effect is limited solely to the space between the resistor and the wick. In EP-062 the only portion in which the tube completely surrounds the wick is a small portion of the tube which is located below the resistor. However, to produce a chimney effect, the heat source must be located below the chimney, as is the case with regard to the present invention.

In the present invention, therefore, in contrast to EP-062, the resistor is located below the perimetric space or chamber produced around the wick. In this arrangement, hot air generated by the resistor is introduced and distributed radially inside the pipe where it is forced in close proximity to the wick and rises through the perimetric space (11) (see, e.g., p. 3, lines 12-16, p. 6, lines 5-6 and Figure 3). The pipe reduces the volume of the space surrounding the wick and thus, less heat energy is required to attain the degree of evaporation that is required. Additionally, in the present invention the suction effect or the chimney increases air flow so that the speed of the hot air inside the pipe and, consequently, the speed of the vaporized substance, is also increased. In this manner, the evaporation of the substance which soaks the wick is not only due to the heat emitted by the resistor, but also by the current of hot air on the surface of the wick.

Turning next to a discussion of the method of the present invention, claim 15 recites a method wherein, *inter alia*, a portion of the wick is enclosed in a chamber and wherein, hot air is introduced into the chamber through one lateral opening. In contrast, in EP-062, there is no chamber due to the fact that tube 4 has had one side completely removed. Thus, it is not possible, with such arrangement, to force hot air in close proximity to the wick within such a chamber, which as indicated above is not present. Thus, the operating principle of the EP-062 device is significantly different from that of the present invention because, in EP-062, the tube 4 only acts as a shield between the wick and the resistor; however, it does not force air around the wick. This can only be achieved with the use of a tubular body such as is found in the presently claimed device. There is no such tubular body present in EP-062 and thus the methods of use of the invention does not overlap with that described in the subject reference.

For the reasons above, therefore, applicants submit that not only the device claims, but also the method claim of their application, are completely distinguishable over EP-062.

### Summary

Applicants submit that all of the Examiner's grounds for rejection are believed to have been overcome and thus the Examiner is respectfully requested to reconsider and withdraw these rejections to permit the application to proceed toward issuance.

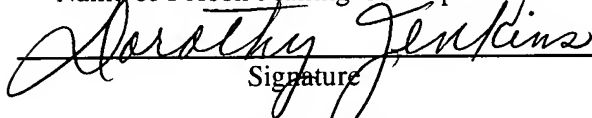
If the Examiner believes that an interview would be useful in overcoming any remaining issues, he is respectfully invited to telephone applicants' representative at the number below to arrange for such an interview.

### EXPRESS MAIL CERTIFICATE

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail to Addressee (mail label #EV342543139US) in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 5, 2006:

Dorothy Jenkins

Name of Person Mailing Correspondence



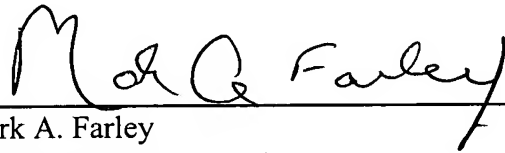
Signature

April 5, 2006

Date of Signature

MAF:lac

Respectfully submitted,



Mark A. Farley

Registration No.: 33,170

OSTROLENK, FABER, GERB & SOFFEN, LLP

1180 Avenue of the Americas

New York, New York 10036-8403

Telephone: (212) 382-0700